

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE

February 26, 2003 Session

JEWELL WINNINGHAM v. FINDLAY INDUSTRIES, ET AL.

**Direct Appeal from the Circuit Court for Warren County
No. 331 James L. Weatherford, Senior Judge**

**No. M2002-02059-WC-R3-CV - Mailed - March 25, 2003
Filed - April 30, 2003**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. In this appeal, the employee insists the trial court erred in denying her application for reconsideration pursuant to Tenn. Code Ann. § 50-6-241(a)(2). As discussed below, the panel has concluded that, under the circumstances, the claimant is entitled to an evidentiary hearing to determine whether she is entitled to an increased award.

Tenn. Code Ann. § 50-6-225(e) (2002 Supp.) Appeal as of Right; Judgment of the Circuit Court Vacated and Case Remanded

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which FRANK F. DROWOTA, III, C. J., and BEN H. CANTRELL, SP. J., joined.

Sonya Henderson, Thomas, Henderson & Pate, Murfreesboro, Tennessee, for the appellant, Jewell Winningham

Kenneth M. Switzer, Ruth, Howard, Tate & Sowell, Nashville, Tennessee, for the appellee, Findlay Industries

MEMORANDUM OPINION

The employee or claimant, Ms. Winningham, initiated this civil action to recover workers' compensation benefits for injuries suffered when a heavy box of materials fell on top of her while she was working for the employer, Findlay Industries. Her alleged injuries included a crushed left hand with lacerated fingers, a fractured left knee and strains to her neck, back and shoulder. At trial, the claimant contended her award of permanent partial disability benefits should exceed two and one-half times her medical impairment rating for the injury because, although she had returned to work at an

hourly wage equal to or greater than what she was receiving at the time of the injury, her actual wages were less than before because she was unable to work as many hours. A medical expert estimated her permanent medical impairment to be 18 percent to the whole body, as a result of her injuries. The special judge found the return to work issue “moot” and awarded permanent disability benefits based on 40 percent to the body as a whole, an amount less than two and one-half times the claimant’s medical impairment rating. That judgment was filed on May 26, 2000. No appeal was taken and the judgment became final. Thereafter, the claimant petitioned the court for reconsideration pursuant to Tenn. Code Ann. 50-6-241(a)(2) and a “Motion to Clarify” the final judgment.

The motion to clarify was argued before a different special judge. At that motion hearing, the court considered the first special judge’s testimony that he did not intend to preclude reconsideration by characterizing the return to work issue as moot. Notwithstanding that undisputed testimony, the special judge dismissed the application for reconsideration “based upon the judgment order of May 26, 2000.” The claimant has appealed. Conclusions of law are reviewed de novo without any presumption of correctness. Nutt v. Champion Intern. Corp., 980 S.W.2d 365, 367 (Tenn. 1998).

Tenn. R. Civ. P. 59 and 60 specify the post trial motions available to a party who is dissatisfied with a final decision. Motions to clarify are not included. The rules of civil procedure are applicable to actions to recover workers’ compensation benefits. Blake v. Plus Mark, Inc., 952 S.W.2d 413 (Tenn. 1997). In addition, the courts are not at liberty to issue advisory decisions. We conclude, therefore, that there is no such thing as a motion to clarify.

Under the Tennessee Workers’ Compensation Act, the right of an employee who suffers a work-related injury to recover compensation benefits from his employer is governed by the statutes in effect at the time of the injury. Nutt v. Champion Intern. Corp., 980 S.W.2d 365, 368 (Tenn. 1998). Such statutes are part of the contract of employment and the rights and responsibilities of such injured employee and his employer can only be ascertained from a consideration of those statutes as construed by the courts. Hudnall v. S. & W. Constr. Co. of Tenn., Inc., 60 Tenn. App. 743, 451 S.W.2d 858 (1969). The entire workers’ compensation system of law is statutory. Vinson v. Firestone Tire and Rubber Co., Inc., 655 S.W.2d 931, 933 (Tenn. 1983). The Act is in the nature of an insurance policy and an action to recover the benefits provided therein is an action on a contract. Woods v. City of LaFollette, 185 Tenn. 655, 661, 207 S.W.2d 572, 574 (1948). It must be interpreted in a manner designed to protect workers and their families from the economic devastation that can follow on-the-job injuries. Nance v. State Ind., Inc., 33 S.W.3d 222, 227 (Tenn. 2000).

Where an injured worker is entitled to permanent partial disability benefits to the body as a whole and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability award that the employee may receive is two and one-half times the medical impairment rating pursuant to the provisions of the American Medical Association Guides to the Evaluation of Permanent Impairment or the Manual for Orthopedic Surgeons in Evaluating Permanent Physical

Impairment. Tenn. Code Ann. § 50-6-241(a)(1). If the injured worker thereafter loses his or her pre-injury employment, the court may, upon proper application made within one year of the employee's loss of employment, and if such loss of employment is within 400 weeks of the day the employee returned to work, enlarge the award to a maximum of six times such impairment rating, allowing the employer credit for permanent partial disability benefits already paid for the injury. Tenn. Code Ann. § 50-6-241(a)(2).

The terms "disability" and "impairment" have different meanings in the context of the Act. Tenn. Code Ann. § 50-6-207(3)(F). Impairment refers to medical and clinical limitations; and disability refers to lost capacity to earn money. Hence, the extent of a worker's disability may be affected by his or her loss of employment, even though his or her impairment remains the same; and a worker's right to seek relief under § 241(a)(2) may not be abrogated by a finding that the return to work issue is moot. If the employee can establish by competent proof that her maximum potential recovery was limited by her return to work, and if her application for reconsideration is timely, she is entitled to a hearing to determine the extent of her permanent disability or lost capacity to earn money. A fair and proper construction of 241(a)(2) requires that she be given the opportunity to prove the extent of her disability under the changed circumstance of being no longer employed by the pre-injury employer at the same or greater wage.

For those reasons, the judgment of the trial court is vacated and the cause remanded for further proceedings consistent herewith. Costs are taxed to the appellee, Findlay Industries.

JOE C. LOSER, JR.

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JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by the appellee, Findlay Industries, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM